HB 4002 vs SB 15: The Choice is Clear

Background: The Michigan Supreme Court ruled July 31, 2024, that two 2018 ballot initiatives to increase the state's minimum wage and mandate paid sick leave requirements for employers should be put into effect — despite never being voted on by the people — saying the strategy the Michigan Legislature used to adopt alternative legislation violated the Michigan Constitution, and now the countdown is on for February 21*st*, 2025 – the date these sweeping new laws will take effect.

Leading business organizations have been vigilant about helping business owners understand their compliance obligations and informing lawmakers of the negative implications the decision could have on employers and workers alike.

What's on the table: During the first week of the 2025-26 legislative session, the Michigan House and Senate introduced legislation to address the issues with both minimum wage/phase out of the tip credit and implementation of the Earned Sick Time Act. While the starting details vary significantly, only House Bill 4002 rectifies the core problems with the Earned Sick Time Act.

Topic	HB 4002	SB 15	Description
Benefit year definition	Any consecutive 12-month period used by an employer	Any regular and consecutive 12-month period determined by employer	Both bills stick with the Department's interpretation that a benefit year can be set by the employer
Definition of an employee (Contractors)	Clearly states that an eligible employee is an individual for whom an employer is required to withhold pay for federal income tax purposes	NA	The Department originally adopted an FAQ that used this definition of employee (excludes contractors) but later rescinded that language from the FAQ; only HB 4002 fixes this in the statute
Definition of an employee (Seasonal)	Individuals employed by an employer for 25 weeks or less in a benefit year for a job scheduled for 25 weeks or less in a benefit year" are excluded	NA	Only HB 4002 excludes seasonal workers from ESTA
Definition of an employee (Part-time)	An individual who worked less than 25 hours per week during the immediately preceding benefit year, or is expected to average less than 25 in the current benefit year are excluded	NA	Only HB 4002 excludes part-time workers from ESTA
Out of state, variable hour, and other employees	Also excludes those whose primary work location is not in the state, variable hour employees, certain rail and flight deck employees	NA	Only HB 4002 excludes variable hour employees and workers whose primary work location is not in Michigan; it is also the only proposal that recognizes federal preemption for rail and flight deck employees

Definition of "Health care professional/provider"	Changes definition to comply with the Family Medical Leave Act, which dictates who can provide documentation demonstrating the need for an employee using earned sick time	NA	ESTA allows "**ANY** person licensed under federal law of this state to provide health care services", which is a broader, more nebulous term than exists in the Family Medical Leave Act. HB 4002 puts Michigan in line with federal standards.
Definition of a "Small Business"	Exempts employers with 50 or fewer employees	Businesses with 25 employees or fewer need to provide 40 hours paid leave, 30 hours unpaid (but are not exempt from the act).	HB 4002 would align Michigan with a number of federal laws, including the Family Medical Leave Act (FMLA), which do not require compliance for businesses with fewer than 50 employees. SB 15 does not create an exemption; rather, it simply expands the current bifurcated approach to ESTA (which currently requires employers with fewer than 10 employees to provide 40 hours paid, 32 hours unpaid).
"Retaliatory action" definition	Removes "threat" of action as retaliatory personnel action violation. Also removes nonsensical language prohibiting sanctions against an employee who is a recipient of public benefits.	NA	HB 4002 peels back some of the harsh restrictions on employers for disciplinary action following use of earned sick time.
Combination with other paid time off (PTO) benefits	Specifies that ESTA may be combined with other paid leave, which can include, but is not limited to, paid vacation days, paid personal days, paid sick leave, or paid time off. Removes problematic language that requires all paid time off to be provided under the "same conditions" as provided under the ESTA.	Retains problematic language specifying an "employer other than a small business is in compliance…if the employer provides any paid leave time off in at least the same amounts amount as that provided under this act that may be used for the same purposes <u>and under the same conditions</u> provided in under this act and that is accrued at a rate equal to or greater than the rate described" in the ESTA.	Only HB 4002 allows employers to count existing PTO benefits they offer towards ESTA requirements – even if all of that time doesn't mirror the ESTA requirements on advanced notice, increments of time, documentation, etc. This gives employers more flexibility to keep their PTO policies in place without having to make changes that don't work for their business or employees.
Carryover of benefits	Employers can limit carryover of unused benefits to 72 hours	If an employer pays the employee out for unused sick time, they can limit carryover to 144 hours,	Under ESTA, employers can limit the use of earned sick time to 72 hours in a given benefit year. In many circumstances, this leads to

	from one benefit year to another	but if they do not pay the employee the value of unused sick time, they must allow up to 288 hours to be carried over	an orphaned benefit for employees, who gain no value in having an endless bank of a benefit they can only use on a limited basis. Restricting carryover to 72 hours, as HB 4002 does, ensures that an employee could enter a benefit year with the maximum amount of earned sick time they could use in that benefit year. It also allows employers to continue to elect payouts – a pro-employee benefit offering.
Front loading the benefit	As an alternative to accrual, an employer may provide 72 hours at the beginning of a benefit year.	As an alternative to the accrual of earned sick time, an employer may provide the benefit at the beginning of a year.	Both HB 4002 and SB 15 allow employers to front load their earned sick time benefit. HB 4002 specifies that this frees employers from tracking the accrual formula while SB 15 does not. HB 4002 is the only proposal that alleviates employers from calculating and tracking carry over in this circumstance, as employees can only take 72 hours of earned sick time in a benefit year and would always begin the year with the maximum amount of the benefit they can use.
Year one calculation	If the benefit year begins before this bill is signed into law, all time provided to an employee this year will count towards compliance obligations	NA	HB 4002 clarifies that any time given prior to the passage of the bill will count towards compliance obligations for this benefit year once the bill is signed into law.
Calculation of sick time rate in cases of variable pay	An employer is not required to include overtime, holiday pay, bonuses, commissions, supplemental pay, piece-rate pay, tips, or gratuities in the calculation of an employee's normal hourly rate.	NA	Under ESTA, employers must account for overtime, commissions, bonuses, etc., when calculating an employees' rate of pay. HB 4002 limits the calculation to just the employees normal wage, which substantially limits likelihood of abuse. SB 15 does not change this part of ESTA.
Notice and notification	An eligible employee shall comply with the employer's usual and customary notice, procedure, and documentation requirements for	An employer with mandated staffing ratios may require an employee to comply with the employer's leave policy; otherwise, an employer may require seven days'	ESTA forces many disciplinary and personnel decisions out of the hands of employers by not allowing them to take any adverse personnel action against an employee who used earned sick time. HB 4002 restores that flexibility for all

	requesting or using sick time or leave.	advanced notice if the need for leave is "foreseeable" and "as soon as practicable" if "unforeseeable."	employers, while SB 15 restores it for a narrow group of employers who are subject to staffing ratios.
Disciplinary action for misuse	An employer may take disciplinary personnel action against an eligible employee if the employee fails to comply with the employer's usual and customary notice requirements.	NA. Retains language specifying an "employer's absence control policy shall not treat earned sick time taken under this act as an absence that may lead to or result in retaliatory personnel action."	Employers are forbidden from any adverse personnel action and are thus unable to endorse their customary notice, procedure, and documentation requirements for use of leave. HB 4002 allows employers to manage their own HR decisions
3 day no-call-no-show	An employer may take disciplinary personnel action against an employee who is absent from work for a period of 3 or more consecutive workdays without contacting the employer.	NA beyond what's in ESTA (i.e., retains language allowing an employer to require documentation after three consecutive days and specifying an "employer's absence control policy shall not treat earned sick time taken under this act as an absence that may lead to or result in retaliatory personnel action").	Under ESTA, employers are only allowed to require documentation from an employee after three consecutive days of no-call-no-show. HB 4002 allows employers to take disciplinary action after three days of no-call-no-show – an action that is typically considered synonymous with resignation.
Increments of time for leave	Employers may limit use of leave to 1-hour increments	Earned sick time must be used in 1-hour increments	Both bills peel back the language in ESTA requiring earned sick time to be used in the smallest increment that the employer's payroll system uses (e.g., one- or six-minute increments). However, HB 4002 gives employers more flexibility on a policy that works for them.
Concurrent leave	If earned sick time also qualifies as leave under FMLA, Title I of the Americans with disabilities act, or other federal or state laws, an employer may require time be taken concurrently.	NA	Employers under ESTA cannot require an employee to use earned sick time concurrently while they utilize another law like FMLA. 4002 allows that ability for employers.
Documentation timeline	An employee must provide documentation not more than 15 days after the employer's request	NA	There is no requirement in ESTA or in SB 15 for timely acquisition of a doctor's note.
Reinstatement / succession	An employer is not required to restore previously accrued unused earned sick time		Allows for (but does not mandate) payouts at separation (and avoid reinstatement upon return). Allows the same instances of a successive

	if the employer pays them out for unused time at termination. The same is true for situations when a different employer succeeds or takes the place of an existing employer.		employer. This is a pro-employee change.
Rebuttable presumption	Rebuttable presumption is eliminated	Rebuttable presumption is eliminated	ESTA contains a rebuttable presumption against the employer in any dispute for ESTA use, meaning the onus is on the employer to prove they are not guilty. Both HB 4002 and SB 15 remove that and put employers and employees on equal footing.
Statute of limitations	NA	1 year	Affected employees have 3 years to file a complaint under ESTA. SB 15 reduces this to 1 and HB 4002 does not.
Private right of action	The right to file a civil action is eliminated; enforcement rests with the state.	The right to file a civil action is eliminated; enforcement rests with the state.	ESTA allows affected employees to bring a civil suit against their employers for violation of the act in addition to the existing remedy through the Department. Both SB 15 and HB 4002 eliminate this private right of action and designate the Department as the proper remedy for violations.
Additional remedies	Employers who fail to provide earned sick time in violation of the act are subject to a $1000 civil fine	Employers who take retaliatory action are subject to a $1000 civil fine, employers who fail to provide earned sick time are subject to a civil fine of 8x an employee's normal hourly rate	HB 4002 removes any civil fine for retaliatory action and allows employers to enforce their own leave and attendance policies, while SB 15 still maintains that restriction. SB 15 introduces a new calculation for failure to provide earned sick time, which is $1000 in HB 4002.